

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: ) Chapter 11  
          )  
EASTERN LIVESTOCK CO., LLC ) Case No. 10-93904-BHL-11  
          )  
          Debtor. ) Hon. Basil H. Lorch III

**OBJECTION OF FIFTH THIRD BANK TO MOTION TO APPROVE AN  
INFORMAL AD HOC COMMITTEE**

Fifth Third Bank (“Fifth Third”), by and through undersigned counsel, hereby submits this Objection to the Motion to Approve an Informal Ad Hoc Committee [Dkt 828] (the “Motion”) filed by the Creditors<sup>1</sup>. In support of this Objection, Fifth Third respectfully states as follows:

1. The Motion is a solution in search of a problem and is, therefore, unnecessary. Moreover, it introduces new and unnecessary disputes that may be difficult to resolve.
2. All the benefits extolled in the Motion can be obtained without the appointment of an ad hoc committee. The creditors can enter into a joint defense agreement among themselves without court approval. The creditors can coordinate pleading responses without a committee. There is already a discovery protocol in place that reduces the complexity and cost of discovery. In short, there is no need for an ad hoc committee short of the proponents litigation goals.
3. Even ad hoc committees are supposed to have common interests. This proposed committee has secured creditors, unsecured creditors, auction houses, producers, and market agencies selling on commission. The only two things the members have in common are: (1) most of them have been sued by the Trustee; and (2) none of them want Fifth Third Bank to realize upon its collateral. Such allegedly common interests held by litigious claimants against

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<sup>1</sup> The term “Creditors” shall have the meaning given to it in the Motion.

the estate are not the appropriate basis to form an ad hoc committee, especially when the case is a liquidating Chapter 11 in which a Trustee has been appointed.

4. The appointment of an ad hoc committee is confusing and prejudicial to the other creditors in this case. The name “Ad Hoc Committee”, when it is comprised of “creditors”, may sound to non-member creditors like this committee is looking out for their respective interests. Of course, the exact opposite is true. For example, the putative members of the ad hoc committee are pursuing “constructive trust” claims that seek to prime Fifth Third Bank’s security interests and any other claim by any other creditor in the case, including general unsecured creditors.

5. The requested relief in paragraph 7 of the Motion reveals the real agenda: the movants wish to (a) manufacture a privilege argument, (b) obtain an advisory opinion that it has standing in all instances to participate in all proceedings, and (c) side-step the obligations imposed by Rule 2019. Each item of such relief is inappropriate.

6. Given that the Motion recites that each member will retain its own counsel, and given that a member of an ad hoc committee is not bound to fiduciary duties, even to other committee members, the prospect of future disputes about the scope of the supposed privilege is likely.

7. Standing for ad hoc committees is usually analyzed as if the committee did not exist. A member either already has standing or does not. The requested relief would allow the ad hoc committee to interject itself into disputes in which it does not have an interest.

8. Finally, the Motion does not clearly reject an eventual request for compensation. Instead, it very carefully says “ ... Creditors are not seeking ... (c) to have fees and/or expense related to the Ad Hoc Committee reimbursed from the estate under 11 U.S.C. § 503(b).” Nothing in this statement would bar such a request later, which would potentially be a bar to resolving this case consensually.

**Conclusion**

For the reasons stated herein above, Fifth Third respectfully requests that the relief requested by the Creditors in the Motion be DENIED; or, in the alternative, such relief be limited and carefully proscribed so as to avoid the creation of unnecessary litigation and prejudice to parties in interest.

December 12, 2011

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of December, 2011, a copy of the foregoing *Objection of Fifth Third Bank to Motion to Approve an Informal Ad Hoc Committee* was served electronically through the Court's CM/ECF System to the following parties who are listed on the Court's Electronic Mail Notice List:

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